

Sec. 5-1-190. Integration.

(a) This franchise supersedes all prior negotiations between the parties hereto and shall be binding upon and inure to the benefit of the parties hereto and each of their respective successors and permitted assigns. This franchise may be amended (except as otherwise expressly provided for herein) only by an agreement in writing signed by duly authorized persons on behalf of both parties. This franchise may be executed in one (1) or more counterparts, all of which taken together shall be deemed an original.

(b) The headings of the various sections of this franchise are for convenience only, and shall not control or affect the meaning or construction of any of the provisions of this franchise.

(c) The rights and remedies of the parties pursuant to this franchise are cumulative and shall be in addition to and not in derogation of any other rights or remedies which the parties may have with respect to the subject matter of this franchise. (Ord. 1-2003 §1)

Sec. 5-1-200. No joint venture.

Nothing herein shall be deemed to create a joint venture or any agency or employment relationship between the parties, and neither party is authorized to nor shall either party act toward any third parties or the public in any manner that would indicate any such relationship with the other. (Ord. 1-2003 §1)

Sec. 5-1-210. Assignment.

(a) The Company shall not assign this franchise without the prior written consent of the Municipality, which consent shall not be unreasonably withheld or delayed. The foregoing shall not apply to the assignment by the Company to any entity which is controlling, controlled by or under the same common control as

the Company, or to any reassignment or sale of ownership among existing shareholders of the Company. In both cases, the obligations of the Company remain the same.

(b) The Municipality hereby consents to the grant by the Company of a security interest in this franchise and all other assets of the cable television system to such lending institution or institutions as may be designated by the Company, which institutions shall have all rights and remedies of a secured party under the applicable provisions of the Uniform Commercial Code. (Ord. 1-2003 §1)

ARTICLE II**Electric Franchise****Sec. 5-2-10. Short title.**

This Article shall be known and may be cited as the "Delta-Montrose Association Franchise Ordinance." (Ord. 1-2001 §1.1)

Sec. 5-2-20. Definitions.

For the purpose of this franchise agreement, the following words and phrases shall have the meaning given in this article. When not inconsistent with context, words used in the present tense include the future tense, words in the plural number include the singular number and words in the singular number include the plural number. The word *shall* is mandatory and *may* is permissive. Words not defined in this Article shall be given their common and ordinary meaning.

Board of Trustees means the legislative body of the Town.

Company means the Delta-Montrose Electric Association, the grantee of rights under this franchise.

Facilities means all facilities reasonably necessary to provide electric service into, within and through the Town, including but not limited to substations, transmission and distribution structures, lines, wires, electrical equipment, transformers, underground lines, meters, meter-reading devices, control equipment, street lights, wires, cables and poles.

Industrial customers means those Town customers which meet the criteria under the applicable "industrial - distribution voltage" rate tariff for the Company.

Public Utilities Commission, PUC or Commission means the Public Utilities Commission of the State or other state agency succeeding to the regulatory powers of the Public Utilities Commission.

Residents means all persons, businesses, industry, governmental agencies and any other entity whatsoever, presently located or to be located, in whole or in part, within the territorial boundaries of the Town.

Revenues means those amounts which the Company receives from sale of electricity to residents.

Streets means streets, alleys, viaducts, bridges, roads, lanes, public utility easements and other public rights-of-way in the Town, excluding any easement the terms of which do not permit the use thereof by the Company. *Within the streets* means upon, above, under, across, along and within said streets.

Town means the municipal corporation designated as the Town of Crawford, Delta County, Colorado, the grantor of rights under this franchise. (Ord. 1-2001 §§1.2—1.11; Ord. 2-2005 §1)

Sec. 5-2-30. Grant of franchise.

(a) The Board of Trustees hereby grants to the Company, for the period specified in and subject to the conditions, terms and provisions contained in this franchise, a nonexclusive right, and the Company hereby assumes the obligation, to furnish, sell and distribute electricity to the Town and to all residents of the Town. Subject to the conditions, terms and provisions contained in this franchise, the Town also hereby grants to the Company a nonexclusive right, and the Company hereby assumes the obligation, to acquire, construct, install, locate, maintain, operate and extend into, within and through the Town all facilities reasonably necessary to furnish, sell and distribute electricity within and through the Town. The Town also hereby grants to the Company a nonexclusive right, and the Company hereby assumes the obligation, to make reasonable use of the streets as may be necessary to carry out the terms of this franchise subject to the Town's prior right of usage for municipal purposes and subject to applicable laws, ordinances and regulations. These rights and obligations shall extend to all areas of the Town as it is now or hereafter constituted.

(b) The rights granted by this franchise are not and shall not be deemed to be granted exclusively to the Company, and the Board of Trustees reserves the right to make or grant a similar franchise to any other person, firm or corporation as allowed by law.

(c) Except as otherwise specifically provided herein, the Board of Trustees retains the right to use, control and regulate, through the exercise of its police power, the use of the streets and the space above and beneath said streets; and the Town retains the right to impose such other regulations as may be determined by the Town to be necessary in the exercise of the police power to protect the health, safety and welfare of the public.

(d) Neither the Town nor the Company waives any rights under the statutes and Constitution of the State of Colorado or of the United States except as otherwise specifically set forth herein.

(e) This franchise constitutes a valid and binding contract between the Company and the Town. In the event that the franchise fee specified herein is declared illegal, unconstitutional or void for any reason by any court or other proper authority, the Company shall be contractually bound to collect and pay monthly rental fees to the Town in an aggregate amount that would be, as nearly as practical, equivalent to the amount which would have been paid by the Company as a franchise fee hereunder as consideration for use of the Town's streets.

(f) The rights and obligations provided for in this franchise encompass street lighting service to the Town and the provisions of this franchise apply with full and equal force to the street lighting service provided by the Company. (Ord. 1-2001 §2.1)

Sec. 5-2-40. Term of franchise.

This franchise shall take effect upon its adoption and shall supersede any prior franchise grants to the Company by the Town. Unless terminated prior to twenty (20) years in accordance with other provisions as contained herein, the term of this franchise shall be for twenty (20) years. (Ord. 1-2001 §3.1)

Sec. 5-2-50. Franchise fee.

(a) In consideration for the franchise rights granted herein, which provide, among other things, for the Company's use of the streets, which are valuable public properties acquired and maintained by the Town at great expense to its residents, and in recognition that the grant to the Company of the use of those streets, and of

the right to provide service to the Town's residents, are valuable rights, the Company shall collect and pay the Town the sums provided in this Section. Except as specified in this franchise, payment of the franchise fee shall not exempt the Company from any other lawful taxes or fees; however, the franchise fee provided for herein shall constitute the exclusive monetary payment by the Company to the Town for the Company's use and occupancy of the streets except as specifically provided herein.

(b) The Company shall collect and pay to the Town a sum of three percent (3%) of its annual gross revenue derived from the sale of electricity to residents, excluding industrial customers, within the corporate limits of the Town.

(c) A transaction or arrangement between the Company and any third party which has the effect of circumventing payment of required franchise fees or evasion of payment of franchise fees by noncollection, nonreporting or any other means which evade the actual collection of revenues by the Company for services delivered over the system or businesses the Company pursues derived from the operation of the system is prohibited.

(d) No acceptance of payment by the Town from the Company shall be construed as an agreement that the amount paid is the correct amount, nor shall acceptance be construed as a release of any claim of which the Town may have for additional sums due and payable under this franchise. (Ord. 1-2001 §4.1)

Sec. 5-2-60. Remittance schedule.

The Company shall remit franchise fee revenues to the Town in monthly installments not more than thirty (30) days following the close of each month. All payments shall be made to the Town. In the event that either the Town or the

Company discovers that there has been an error in the calculation of the franchise fee payment to the Town, the error shall be corrected in the next monthly payment; except that, in the event an error by the Company results in an overpayment of the franchise fee to the Town and said overpayment is in excess of five thousand dollars (\$5,000.00), credit for the overpayment shall be spread over the same period the error was undiscovered. If the overpayment is less than five thousand dollars (\$5,000.00), credit shall be taken against the next payment. In no event shall the Town be required to refund any overpayment made as a result of a Company error which occurred more than three (3) years prior to the discovery of the Company error. Underpayments shall be subject to one and one half percent (1½%) interest per month until paid in full. (Ord. 1-2001 §4.2)

Sec. 5-2-70. Franchise fee not in lieu of permit or other fees.

Payment of the franchise fee by the Company is accepted by the Town in lieu of any utility occupation tax or any rental fee, for the Company's use or occupation of Town streets or for the installation, operation and maintenance of Company facilities. Payment of the franchise fee does not exempt the Company from any other lawful tax or fee, including any fee for an excavation permit, street cut permit or similar requirement. (Ord. 1-2001 §4.3)

Sec. 5-2-80. Change of franchise fee and other terms.

(a) In recognition of the length of the term of the present franchise, and in further recognition of the possibility of legislative regulatory amendments which may allow for the wheeling of electricity through facilities owned by the Company and located within the Town, the parties agree that, in the event of such regulatory amendments or in any unexpected event which would result in a significant decrease in fees collected on behalf of the Town, the Company and the Town shall modify the computation of

the franchise fee as set forth herein. Said modified computation may be based upon volume of electricity delivered rather than the percentage of revenue, at the Town's discretion. The parties agree, to the extent permitted by law, to cooperate in modifying Subsection 5-2-50,(b) of this franchise to assure that the Company collects and the Town receives an amount in franchise fees or some other form that is at least the same amount collected in franchise fees by the Company as of the effective date of this franchise, and for any increases in usage, and in no case less than three (3%) of the gross revenues of the Company derived from sales to Town customers, after adjustment for net write-off of uncollectible amounts and corrections of bills theretofore rendered, regardless of what entity in the future is involved in supplying electricity to the Town and its residents.

(b) In the event that the computation of the franchise fee is modified and based upon volume of electricity delivered in accordance with the provisions herein, both parties agree that, to the extent allowable by law, the Company shall be responsible for the collection of such franchise fee as measured against the total amount of kilowatt-hour consumption of electricity in each month by each resident, business or industry within the Town, from all electric providers and/or distributors. Both parties further agree that such volumetric computation shall be subject to annual adjustment to reflect inflation in accordance with a mutually acceptable price index.

(c) Modification of the franchise fee as provided herein is an express term of this franchise. (Ord. 1-2001 §5.1)

Sec. 5-2-90. Disclosure of records.

(a) The Town or its designated representative or agent shall have access to the books and records of the Company during normal business hours upon reasonable notice for the purpose of ascertaining compliance with the terms of this

franchise. The Town may use such information for the purposes of enforcing its laws, ordinances and regulations. Nothing herein shall exempt the Company from any other requirements regarding the production of information as provided in the laws, ordinances and regulations of the Town.

(b) To the extent allowable by law, the Company shall supply the Town with all of the following information annually without cost to the Town:

(1) Annual reports, including but not limited to, its annual report to its consumers; and

(2) Annual financial summaries of the revenues collected within the Town during the previous year.

(c) To the extent allowable by law, the Company shall supply the Town with all of the following information upon request:

(1) Copies of the official minutes of Board of Directors meetings for the previous year;

(2) A summary of conversions and replacements within the Town which have been accomplished or are underway by the Company, if applicable;

(3) The Company's plans for additional conversions and replacements within the Town, if applicable;

(4) Copies of tariffs, including but not limited to all tariffs, rules, regulations and policies relating to service by the Company to the Town and its residents;

(5) Copies of supporting documentation for the calculation of the franchise fee;

(6) An inventory of the Company's property within the Town; and

(7) Annual and long-term reports for capital improvements planned within the Town. (Ord. 1-2001 §6.1)

Sec. 5-2-100. Enforcement of Town ordinances.

The Town may use the metered information obtained from audits for the purposes of enforcing its laws, ordinances and regulations. (Ord. 1-2001 §6.2)

Sec. 5-2-110. Rates.

Rates charged by the Company for service hereunder shall be fair and reasonable. The Company agrees that it shall be subject to all authority now or hereafter possessed by any regulatory body having jurisdiction to fix just, reasonable and compensatory electric rates. The Company further agrees that the system shall be so designed, constructed and sources of electricity utilized as to provide the most economic development and favorable rate structure possible, taking into account deliverability of electricity and other pertinent conditions. (Ord. 1-2001 §7.1)

Sec. 5-2-120. Comparable rates.

For each rate category within the Company's service area, rates charged to customers within the Town shall be no higher than the lowest rates charged to the Company's customers in the same rate category, excluding franchise fees and other taxes, if applicable. (Ord. 1-2001 §7.2)

Sec. 5-2-130. Rates applicable to Town street lighting and Town-owned facilities.

Rates charged to the Town by the Company for street lighting and Town-owned facilities shall be no higher than the lowest rates charged to the Company's customers for the same rate category, excluding franchise fees and other taxes, if applicable. (Ord. 1-2001 §7.3)

Sec. 5-2-140. Supply; reliability.

(a) The Company shall at all times take all reasonable and necessary steps to assure the adequate supply, transmission and distribution of electricity to the Town and its residents at the lowest reasonable cost consistent with the term of this franchise. In addition, the Company shall operate its facilities pursuant to the highest practicable level of service, quality and reliability in providing electricity to the Town and its residents. The Company recognizes that maintaining service reliability is a substantial obligation under this franchise agreement. Upon the Town's request, the Company will provide the Town copies of service reliability reports.

(b) If the supply, transmission or distribution of electricity to the Town or any resident of the Town is interrupted, the Company shall take all necessary and reasonable actions to restore such supply in the shortest practicable time. If the supply of electricity is to be interrupted due to a planned outage, except in cases of emergency outage repair, the Company shall take adequate reasonable efforts to notify its customers and the Town in advance. The Company shall keep on file in its local office copies of its Rate Schedules, Standards for Service, Rules and Regulations and Service Connection and Extension Policies concurrently in effect or filed with the PUC or other competent authority having jurisdiction in the premises, which copies shall be made available to the Town and its residents.

(c) The Company shall provide to the Town telephone numbers of the Company's dispatch center that will permit the Town to obtain status reports from the Company on a twenty-four-hour basis concerning interruptions of the supply of electricity in any portion of the Town. (Ord. 1-2001 §8.1)

Sec. 5-2-150. Obligations regarding Company facilities.

(a) All work by the Company shall be done:

(1) In a high-quality manner;

(2) In a timely and expeditious manner;

(3) In a manner which minimizes inconvenience to the public and individuals;

(4) In a cost-effective manner, which may include the use of qualified private contractors; and

(5) In accordance with Company policies and procedures, but at all times subject to applicable laws, ordinances and regulations.

(b) The installation, repair or maintenance of Company facilities shall not interfere with water facilities, sanitary or storm sewer facilities, communication facilities or other uses of the streets. Interference with private property, landscaping and other natural features shall be minimized.

(c) The Company shall promptly repair all damage caused by Company activities or facilities. If such damage poses a threat to the health, safety or welfare of the public or individuals, the Town may cause repairs to be made, and the Company shall promptly reimburse the Town for the cost of such repairs.

(d) All nonelectrical work is subject to inspection by the Town and a determination by the Town that said work has been performed in accordance with all applicable laws, ordinances and regulations of the Town. The Company shall promptly perform reasonable remedial action required by the Town pursuant to any such inspection. It shall be a condition of the Town's approval that, for any facility installed,

renovated or replaced after the effective date of this franchise, the Company shall provide the Town with as-built drawings of each such facility in such formats and providing such details as reasonably requested by the Town. Qualified Town personnel may inspect electrical work. Suggested remedial action shall be made only by registered professional engineers with appropriate licensing to make said recommendations.

(e) The installation, renovation and replacement of any facilities in the streets by or on behalf of the Company shall be subject to inspection and approval by the Town as to location. Such inspection and approval may include, but not be limited to, the following matters: location of facilities in streets; cutting and trimming of trees and shrubs; and disturbance of pavements, sidewalks and surfaces of streets.

(f) The Company and all of its contractors shall comply with all applicable Town laws, ordinances and regulations. The Company shall require its contractors working in the streets to hold the necessary licenses and permits required by the Town and other entities having jurisdiction.

(g) The Company shall provide, when available, as-built drawings in digital formats, providing such details as reasonably requested by the Town of each Company facility which exists within the Town. (Ord. 1-2001 §8.2)

Sec. 5-2-160. Excavation and construction.

The Company shall be responsible for obtaining all applicable permits, including any excavation and/or street cut permits, in the manner required by the laws, ordinances and regulations of the Town. All public and private property, whose use conforms to restrictions in public easements, disturbed by Company construction or excavation activities shall be restored by the Company at its expense to substantially its former condition according to then existing Town laws, ordinances and regulations. (Ord. 1-2001 §8.3)

Sec. 5-2-170. Relocation of Company facilities.

(a) Except as provided in Subsection (b) below, relocation of electric facilities installed or maintained in the streets or Town property pursuant to this franchise or any previous franchises shall be made by the Company at its expense, if at any time the Town requests the Company to relocate the same in order to permit the Town:

(1) To construct any public improvement; or

(2) To build any public project.

(b) The provisions of Subsection (a) above are intended to be applied to public projects and improvements only. The provisions shall not apply and the Company shall not be responsible for payment of costs associated with relocation of facilities, when the following apply:

(1) Relocation of the facilities is primarily for aesthetic purposes, beautification or view protection;

(2) Relocation involves facilities owned by the Company in privately held easements; or

(3) Relocation involves existing underground utilities properly located within public easements according to Town specifications, if such relocation is not necessary to the public improvement or public project.

(c) The Company shall complete such relocations as soon as practicable from the date when the Town makes its request, but in any event within ninety (90) days after such request; except that the Company may be granted an extension of time for completion equivalent to any delay caused by conditions not under its control.

(d) When requested by the Town or the Company, representatives of the Town and the Company shall meet to share information regarding anticipated Town projects that will require relocation of Company facilities. Such meetings shall be for the purpose of providing both parties the opportunity to, in good faith, evaluate reasonable alternatives and/or cost-saving measures in an attempt to minimize the fiscal impact upon the Company from the proposed relocation, and to establish timetables with anticipated commencement and completion dates.

(e) Following relocation, all property shall be restored to substantially its former condition by the Company at its expense in accordance with then-existing Town laws, ordinances and regulations.

(f) The Town shall use its best efforts to obtain funding for utility relocations in connection with public projects receiving federal or state funds. When public funds are utilized for the purposes of utility relocation, the Town shall utilize said funds for Company utility relocations in a manner consistent with other utility relocations. Relocated facilities shall be underground, unless the Town determines otherwise.

(g) No expenses pursuant to this Article paid or reimbursed shall be surcharged specifically against residents of the Town. (Ord. 1-2001 §8.4, Ord. 2-2005 §1)

Sec. 5-2-180. Service to new areas.

If the boundaries of the Town are expanded during the term of this franchise, the Company shall extend service to residents in the expanded area at the earliest practicable time and in accordance with the Company's extension policy. Service to the expanded area shall be in accordance with the terms of this franchise, including payment of franchise fees. (Ord. 1-2001 §8.5)

Sec. 5-2-190. Town not required to advance funds.

Upon receipt of the Town's authorization for billing and construction, the Company shall extend its facilities to provide electric service to the Town for municipal uses within the Town limits or for any major municipal facility outside the Town limits and within the Company certificated service area, without requiring the Town to advance funds prior to construction. Upon completion, the Town shall pay the invoice within thirty (30) days of receipt. (Ord. 1-2001 §8.6)

Sec. 5-2-200. Technological improvements.

(a) The Company shall generally introduce and install, as soon as practicable, technological advances in its equipment and service within the Town when such advances are technically and economically feasible and are safe and beneficial to the Town and its residents.

(b) While maintaining flexibility in the provision of services, the Company's system shall, at all times, be no less advanced than any other system operated by the Company within the Company's service area; provided, however, that should an upgrade of the utility services provided to customers within the Town be requested by the Board of Trustees, the Company shall have the right to meet, confer and negotiate with the Town concerning the economic practicality of such an upgrade, giving due consideration to the remaining term of the franchise and other reasonable incentives. The Company shall submit to the Town related information upon the Board of Trustees' request, including but not limited to: a plan for provision of such services or a justification indicating the reason such services are not feasible for the Company's customers within the Town. The Company retains the right to make the final decision as to the technological improvements and/or upgrades made by the Company.

(c) The provisions of this franchise apply specifically to electric services. Nothing in this agreement precludes the Company from engaging in any other lawful activities that are not subject to franchise agreements. (Ord. 1-2001 §8.7; Ord. 2-2005 §1)

Sec. 5-2-210. Compliance with Town regulations.

The Town expressly reserves, and the Company expressly recognizes, the Town's right and duty to adopt, from time to time, in addition to the provisions herein contained, such laws, ordinances and regulations deemed necessary by the Town in the exercise of its police power for the protection of the health, safety and welfare of its citizens. The Company shall comply with all applicable laws, ordinances and regulations of the Town, including but not limited to all Town building and zoning codes and requirements regarding curb and pavement cuts, excavating, digging and other construction activities. (Ord. 1-2001 §9.1)

Sec. 5-2-220. Town review of plans.

Prior to construction of any significant electric facilities such as transmission lines and substations within the Town or of a building or other structure within the Town, the Company shall furnish to the Town the plans and a description of the proposed location of such facilities, building or structure. In addition, upon request by the Town, the Company shall assess and report on the impact of its proposed construction on the Town environment. Such plans and reports may be reviewed by the Town to ensure that all applicable laws, including building and zoning codes and air and water pollution requirements, are met; that aesthetic and good planning principles have been given due consideration; and that adverse impact on the environment has been minimized. The Company shall comply with all regulatory requirements of the Town and shall incorporate all other reasonable changes requested by the Town. (Ord. 1-2001 §9.2)

Sec. 5-2-230. Inspection.

The Town shall have the right to inspect, at all reasonable times, any portion of the Company's electric system used to serve the Town and its residents. The Company agrees to cooperate with the Town in conducting the inspection and to correct any discrepancies affecting the Town's interest in a prompt and efficient manner. Said inspection shall be performed only by qualified inspectors working under a professional engineer's license. (Ord. 1-2001 §9.3; Ord. 2-2005 §1)

Sec. 5-2-240. Town use of Company facilities.

The Town shall be permitted to make all reasonable use of the Company's distribution poles and street lighting poles for any Town purpose so long as such use complies with appropriate safety codes, including the Company's safety regulations. Said use shall be without cost to the Town so long as such use does not unreasonably interfere with the Company's use of its facilities for distribution of electricity or create a hazard. The Town shall be responsible for all costs, including maintenance costs, associated with any modifications to the Company's facilities to accommodate the Town's use of such facilities. (Ord. 1-2001 §10.1)

Sec. 5-2-250. Noncompetitor's use.

The Company shall allow telecommunications companies and/or cable companies who hold a franchise or encroachment permit from the Town to utilize the Company's distribution poles and other suitable overhead structures for the placement of their facilities based upon the Company's joint-use pole attachment agreement, so long as such terms and conditions are not inconsistent with the Company's obligations under this franchise. The Company shall not be required to assume any liability or to be put to any additional expense in connection with any such use, nor be required to permit any such use

for the distribution of electricity. No such use shall be required if it would constitute a safety hazard or would unreasonably interfere with the Company's use of the same. (Ord. 1-2001 §10.2)

Sec. 5-2-260. Competitor's use.

If the Company chooses, or is required by law, to transport electricity supplied by other entities over the Company's facilities to Town residents, such transportation shall not be prohibited under this franchise. The Company shall periodically report to the Town a list of all entities for which the Company is providing such transport services and, to the extent allowable by law, the names and addresses of each such entity and each Town resident to whom electricity is transported and the amount of electricity transported by the Company for each such entity. Nothing in this franchise shall preclude the Town from collecting from such entities or residents all applicable taxes and fees required by the Town's laws, ordinances and regulations. (Ord. 1-2001 §10.3)

Sec. 5-2-270. Emergency use.

In the case of any emergency or disaster, the Company shall, upon reasonable request of the Town, make available its facilities for emergency use during the emergency or the disaster period. Such use of Company facilities shall be of a limited duration and will only be allowed if the use does not interfere with the Company's own use of its facilities occasioned by such emergency or disaster. (Ord. 1-2001 §10.4)

Sec. 5-2-280. Trenches available for Town use.

The Town and Company agree that it is in the best interest to the community to share and combine facilities in common trenches, ductways, etc. The Company and Town hereby agree to work together to see that facilities are combined to minimize impacts to the community. (Ord. 1-2001 §10.5)

Sec. 5-2-290. Town held harmless.

(a) The Company shall construct, maintain and operate its facilities in a manner which provides reasonable protection against injury or damage to persons or property; provided, however, that said obligation of the Company shall not increase or decrease its liability on third party claims.

(b) The Company shall save the Town harmless and indemnify the Town from and against all liability or damage and all claims or demands whatsoever in nature and reimburse the Town for all its reasonable expenses, including attorneys' fees, arising out of the operations of the Company within the Town and the securing of and the exercise by the Company of the rights granted in this franchise, including any third party claims, administrative hearings and litigation.

(c) The indemnification hereby extended shall include delay damages as that term is used in Section 24-91-103.5 et seq., C.R.S., or any successor law thereto, awarded against the Town in favor of contractors for damages incurred by contractors for delays experienced in the performance of public works contracts entered into with the Town; provided, however, that said indemnification shall extend only to those delays in performance of public works contracts for which the Company either agrees it is responsible or which were caused as the result, in whole or in part, of the acts or omissions of the Company in the performance of its obligations under this franchise. Unless the Company otherwise agrees in writing, in no event shall the Company be required to indemnify the Town for any delay damages awarded against the Town unless and until a final determination has been made by a court of competent jurisdiction that the delay damages suffered by a contractor was the result of the acts or omissions of the Company acting on behalf of or within the Town's control. Nothing herein contained shall be construed as